

JAMES E. LYONS (STATE BAR NO. 112582)
THOMAS V. CHRISTOPHER (STATE BAR NO. 185928)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Embarcadero Center, Suite 3800
San Francisco, California 94111
Telephone: (415) 984-6400
Facsimile: (415) 984-2698

GARRETT J. WALTZER (STATE BAR NO. 130764)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Telephone: (650) 470-4500
Facsimile: (650) 470-4570

Attorneys for Defendant
YAHOO! INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CONGREGATION BETH AARON,
Derivatively on behalf of YAHOO! INC.,

Plaintiff,

v.

JERRY YANG, RON BURKLE, ROBERT
KOTICK, GARY WILSON, MAGGIE
WILDEROTTER, ROY BOSTOCK, ERIC
HIPPEAU, ARTHUR KERN, EDWARD
KOZEL, and VYOMESH JOSHI,

Defendants,

And YAHOO! INC.,

Nominal Defendant.

CASE NO.: 5:08-CV-05438-RMW

**STIPULATION AND [PROPOSED]
ORDER SETTING BRIEFING
SCHEDULE AND HEARING ON
YAHOO! INC.'S MOTION TO DISMISS
CONGREGATION BETH AARON'S
AMENDED VERIFIED
SHAREHOLDER DERIVATIVE
COMPLAINT**

1 WHEREAS, on December 3, 2008, plaintiff Congregation Beth Aaron filed a Verified
2 Shareholder Derivative Complaint against defendants Jerry Yang, Ron Burkle, Robert Kotick,
3 Gary Wilson, Maggie Wilderotter, Roy Bostock, Eric Hippeau, Arthur Kern, Edward Kozel,
4 Vyomesh Joshi (the “Individual Defendants”), and nominal defendant Yahoo! Inc. (“Yahoo!”)
5 (collectively, the “Defendants”), in the San Jose Division of the United States District Court for the
6 Northern District of California (the “Complaint”);

7 WHEREAS, on December 19, 2008, the parties submitted a written stipulation to the Court
8 extending Defendants’ time to answer, move or otherwise respond to the Complaint until
9 February 3, 2009;

10 WHEREAS, on January 29, 2009, the parties submitted a written stipulation to the Court
11 extending Defendants’ time to answer, move or otherwise respond to the Complaint until March 23,
12 2009;

13 WHEREAS, on February 20, 2009, Congregation Beth Aaron filed an Amended Verified
14 Shareholder Derivative Complaint against the Individual Defendants and nominal defendant Yahoo!
15 (the “Amended Complaint”);

16 WHEREAS, there has been pending in the Delaware Court of Chancery since February
17 2008 five shareholder actions against Yahoo! and certain current and former officers and directors
18 of Yahoo!, including the Individual Defendants, that were consolidated under the caption In re
19 Yahoo! Shareholder Litigation, Cons. C.A. No. 3561-CC (the “Delaware Action”) and which
20 contain both class and derivative claims;

21 WHEREAS, on December 10, 2009, Yahoo!, the individual defendants in the Delaware
22 Action and plaintiffs in that action executed a Stipulation And Agreement Of Settlement (the
23 “Settlement Agreement”) that releases, subject to approval of the Court of Chancery, all claims
24 asserted by plaintiffs in the Delaware Action or “that could have been asserted in any forum by
25 Plaintiffs or any Class Member, on behalf of themselves, the Class or Yahoo!, against [Yahoo! or
26 the individual defendants in the Delaware Action] which arise out of, relate to, or are based upon
27 alleged breaches of fiduciary duty to Yahoo! and its shareholders or other alleged violations of law,
28

1 including the federal securities laws or other federal, state or local law, arising from or in
2 connection with Defendants' responses to Microsoft's proposal to acquire the Company, [an
3 agreement between Yahoo! and Google Inc., the terms of which were disclosed on June 13, 2008],
4 or the proxy contest with Carl Icahn, prior to the last day of the Class Period, including without
5 limitation the matters alleged" in complaints submitted by plaintiff in the Delaware Action to the
6 Court of Chancery;

7 WHEREAS, on March 9, 2009, the Court of Chancery issued an order (the "Chancery
8 Court Order") certifying the Delaware Action as a class action and approving the Settlement
9 Agreement as "fair, reasonable and adequate and in the best interests of the Class, Yahoo! and its
10 stockholders...";

11 WHEREAS, Yahoo! intends to file a motion to dismiss Congregation Beth Aaron's
12 Amended Complaint based on the Settlement Agreement and the Chancery Court Order (the
13 "Motion") in which the Individual Defendants are expected to join;

14 WHEREAS, Defendants and Congregation Beth Aaron believe that the Motion raises a
15 threshold issue regarding the effect of the Settlement Agreement and the Chancery Court Order on
16 this action and further believe that the interests of judicial efficiency and the conservation of
17 judicial and private resources would be best served if the Motion is decided prior to the Court's
18 consideration of any other arguments Defendants may wish to present in favor of dismissal of the
19 Amended Complaint;

20 WHEREAS, the parties agree that all discovery and other proceedings shall be stayed
21 during the pendency of the Motion;

22 WHEREAS, Defendants and Congregation Beth Aaron wish to set a briefing schedule and
23 hearing date for the Motion while preserving Yahoo! and the Individual Defendants' rights to move
24 to dismiss the Amended Complaint based on grounds not asserted in the Motion if the Court denies
25 the Motion in whole or in part;

26 Now, therefore, the Defendants and Congregation Beth Aaron hereby stipulate and agree as
27 follows:

1 1. Yahoo! shall file the Motion and the Individual Defendants shall join in the Motion
2 by March 30, 2009;

3 2. Congregation Beth Aaron shall file its opposition to the Motion by May 1, 2009;

4 3. Any reply to Congregation Beth Aaron's opposition shall be filed by May 15, 2009;

5 4. The hearing on the Motion shall be held on May 29, 2009;

6 5. If the Court denies the Motion in whole or in part, Defendants shall have 30 days
7 from issuance of the Court's order denying the Motion in whole or in part to move to dismiss the
8 Amended Complaint based on any grounds other than those set forth in the Motion.

9 **IT IS SO STIPULATED**

10 DATED: March 16, 2009

Wolf, Haldenstein, Adler, Freeman & Herz LLP

11
12 By: /s/ Betsy C. Manifold
13 Betsy C. Manifold
14 Attorneys for Plaintiff
Congregation Beth Aaron

15 DATED: March 16, 2009

Munger, Tolles & Olson LLP

16
17 By: /s/ Robert L. Dell Angelo
18 Robert L. Dell Angelo
19 Attorneys for Defendants
20 Jerry Yang, Roy J. Bostock, Ronald W. Burkle,
Eric Hippeau, Vyomesh Joshi, Arthur H. Kern,
Robert A. Kotick, Edward R. Kozel, Gary L.
Wilson and Maggie Wilderotter

21 DATED: March 16, 2009

22 Skadden, Arps, Slate, Meagher & Flom LLP

23
24 By: /s/ James E. Lyons
25 James E. Lyons
26 Attorneys for Nominal Defendant
27 Yahoo! Inc.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

For good cause shown, the briefing and hearing schedule on the Motion is set as follows:

1. Yahoo! shall file the Motion and the Individual Defendants shall join in the Motion by March 30, 2009;
2. Congregation Beth Aaron shall file its opposition to the Motion by May 1, 2009;
3. Any reply to Congregation Beth Aaron's opposition shall be filed by May 15, 2009;
4. The hearing on the Motion shall be held on May 29, 2009 at 9:00 a.m.;
5. If the Court denies the Motion in whole or in part, Defendants shall have 30 days from issuance of the Court's order denying the Motion in whole or in part to move to dismiss the Amended Complaint based on any grounds other than those set forth in the Motion.

IT IS SO ORDERED

Dated: _____

The Honorable Ronald M. Whyte
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
James E. Lyons
Garret J. Waltzer
Thomas V. Christopher

By: /s/ James E. Lyons
James E. Lyons
Attorneys for Defendant
YAHOO! INC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, James E. Lyons, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Setting a Briefing Schedule and Hearing on Motion to Dismiss Congregation Beth Aaron's Amended Verified Shareholder Derivative Complaint. In compliance with General Order 45.X.B., I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of March 2009, at Palo Alto, California.

/s/ James E. Lyons
James E. Lyons